REMARKS

Claims 1-45 are pending in the present application. Claims 1-12, 15-17, 19, 21, 31, 35-37, 44 and 45 were amended. Reconsideration of the claims is respectfully requested.

I.   35 U.S.C. § 101: Claims 1-6, 9, 10, 35, and 37

The Examiner has rejected claims 1-6, 9, 10, 35, and 37 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. The claims have been amended accordingly. In addition, Applicant has amended claims 7-9, 36, 44, and 45 so as to be proactive concerning potential concerns in this area.

II.   35 U.S.C. § 102, Anticipation: Claims 1, 2, 7-12, 17-22, 27-44

The Examiner has rejected claims 1, 2, 7-12, 17-22, and 27-44 under 35 U.S.C. § 102(e) as being anticipated by *Domenick* et al., Travel Fares Packaging System and Method, U.S. Patent Publication No. 2002/0072937, June 13, 2002 (hereinafter "*Domenick*"). This rejection is respectfully traversed.

The Examiner states on page 5 of the Office Action dated August 12, 2005 that:

> As per **Claims 1, 11, 21 31, and 44**, *Domenick* discloses a method of accepting reservation requests in a reservation system, comprising:
> - receiving a request for a customized service, wherein the request includes customized service parameters that are not predefined by the reservation system (Para. 5, lines 3-4; Para.12, lines 5-6; Para. 22, lines 9-12; Para. 29 and 35);
> - determining if the customized service may be provided based on the customized service parameters (Para. 28, lines 3-6); and
> - accepting the request for the customized service if the customized service may be provided (Para. 29, lines 18-23).

Office Action dated August 12, 2005, page 5.

Claim 1, which is representative of claims 11, 21, and 31 is recited as follows:

> A computer implemented method of accepting reservation requests in a reservation system, comprising:
> building a reservation comprises a set of individual services responsive to user input to the reservation system;

> receiving a request for a customized service in the reservation,
> wherein the customized service is not predefined by the reservation
> system;
>> determining if the customized service may be provided based on
> customized service parameters associated with the customized request;
> and
>> **accepting the request for the customized service into the
> reservation system when the customized service may be provided,
> wherein the accepting is sent to a customer.**

Examiner alleges that *Domenick* provides "accepting the request if the customized service may be provided." *Domenick* is cited below:

> The customer interface includes an HTTP server capable of transmitting
> custom web pages to customers 106 via the World Wide Web. The
> customer interface also may include an email server, such as a Simple
> Mail Transfer Protocol ("SMTP") server, capable of sending custom email
> messages to customers 106 via the Internet.

Domenick paragraph 29 lines 18-23.

Domenick does not teach "**accepting the request for the customized service when the
customized service may be provided, wherein the accepting is sent to a customer**".
Domenick merely shows an HTTP server for transmitting and an email server for sending. In
contrast, the recited claim 1 is for "**accepting the request for the customized service when the
customized service may be provided, wherein the accepting is sent to a customer.**" A
thorough reading of *Domenick* reveals no accepting whatsoever. Consequently, Examiner has
not shown all elements of claim 1. Since the Examiner has not made a *prima facie* case of --
anticipation, claim 1 is presently allowable.

Examiner may suggest that *Domenick* teaches accepting in the following *Domenick* cite:

> The dynamic packaging engine 204 receives the customer order and
> communicates with the appropriate travel service providers 102 via the
> market place engine 202 to confirm availability of the packaged travel
> services and to reserve those services on behalf of the customer 106.

Domenick paragraph 29 lines 32-37 of that paragraph.

Arguendo, that the above cite describes an "accepting", nothing in *Domenick* teaches,
"accepting the request for the customized service when the customized service may be provided,
wherein the accepting is sent to a customer.." Rather than teach the recited claim 1 feature of
customized service, *Domenick* teaches assembling different permutations of services already in

travel service provider's inventories:

> Preferably, the dynamic packaging engine 204 creates this request and sends it to the market place engine 202. The market place engine 202 engine then forwards the request to the appropriate travel service providers 102 and **then receives any new responsive inventory information from the service providers 102.**
>
> [0037] Once the available travel services have been identified, the dynamic packaging engine 204 selects particular travel services for packaging according to the travel package profile in step 408. In selecting travel services, the dynamic packaging engine 204 applies any necessary packaging rules received from the service providers 102. The packaging system 100 then presents the selected travel services as a package to the customer 106 via the customer interface 210 in step 410.

Domenick paragraph 36 line 15 through paragraph 37 line 9 of that paragraph. (emphasis added)

In contrast, the customized service of claim 1 is explained:

> In addition to the rules and regulations 420, the reservation system 410 includes predefined services 430. The predefined services 430 include regular services 432 that are provided to all customers and privileged services 434 that are provided to certain groups of customers.

Specification page 13 lines 15-19.

> Customized services, as the term is used herein, refers to services that are not predefined by the reservation system. These are services that are defined by the user in a reservation request. For example, a user may request that, as part of an airline meal upgrade, he be served caviar with his meal. **This is a service that is not provided with regular services and is not something that the airline is offering as a privileged service,** but is rather, simply something that the user is requesting without being told that it is available *a priori.*

Specification page 14 lines 8-18 (emphasis added)

Consequently, the Examiner has not shown all elements of claim 1. Since the Examiner has not made a *prima facie* case of anticipation, claim 1 is presently allowable.

In view of the above, *Domenick* does not teach all the features of claim 1. At least by virtue of their dependency on claim 1, *Domenick* also does not teach all the features of dependent claims 2-10. Additionally, claims 2-10 claim other additional combinations of features not suggested by the reference. For example, *Domenick* does not teach, "wherein determining if the customized service may be provided includes comparing the customized service parameters to a

set of rules associated with the reservation system" (claim 2).

In view of the above, *Domenick* does not teach all the features of claim 11. At least by virtue of their dependency on claim 11, *Domenick* also does not teach all the features of dependent claims 12-20, 41, 42 and 43. Additionally, claims 12-20, 41, 42 and 43 claim other additional combinations of features not suggested by the reference. For example, *Domenick* does not teach, "instructions for requesting the customized service from a service provider" (claim 16).

In view of the above, *Domenick* does not teach all the features of claim 21. At least by virtue of their dependency on claim 21, *Domenick* also does not teach all the features of dependent claims 22-30. Additionally, claims 22-30 claim other additional combinations of features not suggested by the reference. For example, *Domenick* does not teach, "wherein if the customized service parameters fall within the rules that are applicable to standard users, the customized service is determined to be able to be provided" (claim 24).

In view of the above, *Domenick* does not teach all the features of claim 31. At least by virtue of their dependency on claim 31, *Domenick* also does not teach all the features of dependent claims 32-40. Additionally, claims 32-40 claim other additional combinations of features not suggested by the reference. For example, *Domenick* does not teach, "wherein the communication session includes at least one of instant messaging, electronic mail messaging, data network telephony, and conventional telephone communication" (claim 38).

Claim 44 is recited as follows:

> A method of accepting reservation requests in a reservation system, comprising:
> receiving a request for a customized service as a result of a user interaction with a web page displayed on a user device, wherein the request includes customized service parameters that are not predefined by the reservation system;
> responsive to detecting a customized service request, initiating a real-time communication session between a user associated with the user device and a representative associated with a service provider, wherein one endpoint of the communication session is the user device; and
> accepting the request for the customized service if the customized service may be provided by the service provider.

Examiner alleges that *Domenick* teaches, "receiving a request for a customized service, wherein the request includes customized service parameters that are not predefined by the

reservation system". Assuming, arguendo, that this is true, Examiner does not use *Domenick* to show recited claim 44's "**receiving a request for a customized service as a result of a user interaction with a web page displayed on a user device.**"

In addition, Examiner does not use *Domenick* to show recited claim 44's "responsive to detecting a customized service request, initiating a real-time communication session between a user associated with the user device and a representative associated with a service provider, wherein one endpoint of the communication session is the user device." In place of this recited feature, Examiner offers: "determining if the customized service may be provided based on the customized service parameters." Examiner makes no mention of the recited, "customized service request." Examiner makes no mention of the recited, "real-time communication session." Examiner makes no mention of the recited, "user associated with the user device." Examiner makes no mention of the recited, "representative associated with a service provider." In short, the Examiner does not seem to attempt to match any part of *Domenick* to several of the recited features of claim 44.

Moreover, Examiner alleges that *Domenick* shows, "accepting the request for the customized service if the customized service may be provided". Assuming, arguendo, that this is true, Examiner does not use *Domenick* to show recited claim 44's "accepting the request for the customized service if the customized service may be provided by the service provider". Rather, *Domenick*, treats as irrelevant as to which service provider, if any, may provide the customized service.

In view of the foregoing, Examiner does not show all elements of claim 44. Examiner fails to make a *prima facie* case of anticipation.

Furthermore, *Domenick* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. *Domenick* actually teaches away from the presently claimed invention because it teaches a "dynamic packaging engine selects particular travel services for packaging" (*Domenick* paragraph 37) as opposed to a "accepting the request if the customized service may be provided" as in the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement "accepting the request if the customized service may be provided", one of ordinary skill in the art would not be led to modify *Domenick* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify *Domenick* in this manner, the presently

claimed invention can be reached only through an improper use of hindsight using the Applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

Therefore, the rejection of claims 1, 2, 7-12, 17-22, and 27-44 under 35 U.S.C. § 102(e) has been overcome.

III.   35 U.S.C. § 103, Obviousness: Claims 3-6, 12-16, and 23-26

The Examiner has rejected claims 3-6, 12-16, and 23-26 under 35 U.S.C. § 103(a) as being unpatentable over *Domenick* in view of *Laval* et al., Method and System for Managing Attraction Admission, U.S. Patent No. 6,173,209, January 9, 2001 (hereinafter "*Laval*"). This rejection is respectfully traversed.

The Examiner states on page 8 of the Office Action dated August 12, 2005 that:

> As per **Claims 3, 13, and 23**, *Domenick* discloses all of the limitations of claims 1, 11, and 21. *Domenick* fails to disclose a method wherein the rules include rules that are applicable to standard users and rules that define fuzzy areas in which the rules applied to standard users may be relaxed for privileged users. However, *Laval* et al. discloses a method in which certain customers are entitled to certain routes while the standard customers must wait in line (Col. 3, lines 55-67; Col. 4, lines 1-7). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of *Domenick* in order to have less restrictive rules for privileged customers as disclosed by *Laval* et al. because it would be obvious to want to reward or assist certain customers for their loyalty.

Office Action dated August 12, 2005, page 8.

Claims 3-6, 12-16, and 23-26 are dependent on claims 1, 11, and 21. As discussed in section II above, *Domenick* does not teach the feature of accepting requests for customized services as believed by the Examiner. Consequently, dependent claims 3-6, 12-16, and 23-26 recite features, by virtue of their dependency, that *Domenick* does not teach. In addition, *Laval* also does not teach the feature of accepting requests for customized services.

Claim 3, which is representative of claims 13 and 23, is as follows:

> The computer implemented method of claim 2, wherein the rules include rules that are applicable to standard users and rules that define fuzzy areas in which the rules applied to standard users may be relaxed for

privileged users.

Applicants agree with Examiner that *Domenick* fails to disclose a method wherein the rules include rules that are applicable to standard users and rules that define fuzzy areas in which the rules applied to standard users may be relaxed for privileged users. Applicants agree with Examiner that *Laval* discloses a method in which certain customers are entitled to certain routes while the standard customers must wait in line.

Examiner does not use *Laval* to show the recited claim 3's: "a method wherein the rules include rules that are applicable to standard users and rules that define fuzzy areas in which the rules applied to standard users may be relaxed for privileged users." Assuming, for the moment, that Examiner intended *Laval* to show this aspect, a thorough reading of *Laval* does not reveal anything similar. Rather *Laval* is directed, per the abstract, to permitting a customer to access an attraction in a manner which avoids standing in a first waiting line by verifying entitlement to utilize a second queue, obtaining a pass entitling the customer to access the attraction at a future time, and returning to the attraction at the future time and gaining access with the pass. In essence, *Laval* is placing more limitations on entitled customers, by permitting access only during a future time, and requiring that the entitled customer obtain a pass to do so. If anything, what rules exist in *Laval* are made more strict, since the ordinary customer is not required to obtain a pass, nor limited in the time to access.

In contrast, claim 3 recites, "a method wherein the rules include rules that are applicable to standard users and rules that define fuzzy areas in which the rules applied to standard users may be relaxed for privileged users."

Moreover, even if the combination of *Domenick* and *Laval* reached claim 3, the prior art states conflicting goals. On one hand, *Domenick* provides as follows

> Travel agents typically have access only to public fares on the global distribution systems.

Domenick paragraph 0009

> As a result, travel agents do not have access to private fares, even for purposes of packaging

Domenick paragraph 0009.

Packaging provides an ideal vehicle for marketing special fares.

Domenick paragraph 0011.

An object of the present invention is to provide an improved system and method for conveniently packaging travel services for customers.

Domenick paragraph 0012

The goals stated by *Domenick* make no distinctions between customers, not even based on loyalty. Rather, *Domenick* simply expands the universe of choices for all customers.

Neither does *Laval* provide the alleged motivation. Rather than give privilege status based on loyalty, *Laval* discriminates: "only customers which pay a premium amount or obtain some special entitlement are permitted to access one or more attractions via the second queue" (*Laval* column 16 lines 9-12). Consequently, there is no motivation in *Domenick* nor in *Laval* to combine.

Unless some teaching exists in the prior art for the suggested modification, merely asserting that such a modification would be obvious to one of ordinary skill in the art is improper and cannot be used to meet the burden of establishing a *prima facie* case of obviousness. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art has suggested the desirability of the combination." *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992). As the Examiner has failed to demonstrate any motivation or incentive in the prior art to combine and modify the references so as to achieve the claimed invention, the alleged combination can only be the result of impermissible hindsight reconstruction using Applicants' own disclosure as a guide. While Applicants understand that all examination entails some measure of hindsight, when the rejection is based completely on hindsight, as in the present case, to the exclusion of what can be gleaned from the references, then the rejection is improper and should be withdrawn.

In view of the above, *Domenick* in view of *Laval* does not teach all the features of claim 3. At least by virtue of their dependency on claim 3, *Domenick* in view of *Laval* also does not teach all the features of dependent claims 4-6. For example, determining that the customized service is able to be provided if the customized service parameters fall within the rules that define the fuzzy areas and the submitter is a privileged user (claim 6).

In view of the above, *Domenick* in view of *Laval* does not teach all the features of claim 13. At least by virtue of their dependency on claim 13, *Domenick* in view of *Laval* also does not teach all the features of dependent claims 14-16. For example, instructions for determining that the customized service may be provided if the response from the service provider indicates that the service provider can provide the customized service (claim 16).

In view of the above, *Domenick* in view of *Laval* does not teach all the features of claim 23. At least by virtue of their dependency on claim 23, *Domenick* in view of *Laval* also does not teach all the features of dependent claims 24-26. For example, means for determining that the customized service is able to be provided if the customized service parameters fall within the rules that define the fuzzy areas and the submitter is a privileged user (claim 25).

It is believed that the Examiner intended to make only 35 U.S.C. § 102(e) arguments in relation to claim 12, since the Examiner offers no substantive argument concerning claim 12 under the heading of U.S.C. § 103(a), but does so in relation to the heading of 35 U.S.C. § 102(e).

Therefore, the rejection of claims 3-6, 12-16, and 23-26 under 35 U.S.C. § 103(a) has been overcome.

IV. 35 U.S.C. § 103, Obviousness: Claim 45

The Examiner has rejected claim 45 under 35 U.S.C. § 103(a) as being unpatentable over *Domenick* in view of *Kenigsberg* et al., Must Fly, U.S. Patent Publication No. 2003/0036928, February 20, 2003 (hereinafter "*Kenigsberg*"). This rejection is respectfully traversed.

The Examiner states on page 10 of the Office Action dated August 12, 2005 that:

> As per Claim 45, *Domenick* discloses all of the limitations of claims 44. *Domenick* fails to disclose a method wherein a fee and arrangements for the customized service are negotiated. However, *Kenigsberg* et al. discloses a method in which customers can customize their requests for a fee (Col. 8, Claim 11). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of *Domenick* in order to allow a customer to modify their request for a fee as disclosed by *Kenigsberg* et al. because it would be obvious to want to allow the user a request modification in order to satisfy the customer while at the same time charging them a fee for the modification.

Office Action dated August 12, 2005, page 10.

Claim 45 is recited as follows:

> The method of claim 44, wherein a fee and arrangements for the customized service are negotiated.

Applicant is unable to find the referenced text in *Kenigsberg* since *Kenigsberg* is a publication without column numbering. *Kenigsberg* claim 11 is as follows:

> 11. An e-commerce system that increases revenues of a travel products supplier on a per product use basis, as per claim 10, wherein said system can either accept/or reject the modification request within a given time period and the modification fee is defined according to one or more of the following rules: list price of the product, fare type, time left before the departure, personalization of the travelers wishing to give away their product, number of requesting travelers in the system, personalization of requesting travelers, whether or not the product is fully booked, past statistics, number of travelers with alterable products are on a specific departure, number of travelers wishing to give away their seats at the same time, and how long before departure the product was booked.

Kenigsberg, per the abstract, is directed to:

> A system and method that maximizes the revenues of an airline for a selected flight by automatically balancing the consumption of flight tickets between travelers who have different demand curves for the same flight, which is sold out at a given time. The system accepts information from customers who have a high demand for a specific flight, while there are no available tickets that fit their needs (Type A customers), and finds customers that own tickets to the flight, but have lower demand for being on that flight (Type B customers). Based on advanced rules the system offers substitutes to Type B customers for giving away their tickets, and sells it to Type A customers who pay a different price for the tickets than Type B customers.

Consequently, the modification requests *Kenigsberg* describes are modifications to an established flight manifest for a specific flight wherein the flight is booked or overbooked. Furthermore, *Kenigsberg* does not even describe a customized service, since bumping passengers has happened since nearly the dawn of commercial aviation and is not remotely associated with customizing to suit unusual needs of a passenger. As a result, the combination of *Kenigsberg* and *Domenick* does not reach claim 45.

Claim 44 has been shown not to be anticipated by *Domenick* in section II above. Thus, claim 45 has been shown to be based on an allowable base claim for reasons that *Domenick* does

not supply all elements of claim 44. Examiner does not use *Kenigsberg* to supply the elements that *Domenick* misses with relation to claim 44.

Therefore, the rejection of claim 45 under 35 U.S.C. § 103(a) has been overcome.

V.   Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: November 14, 2005

Respectfully submitted,

Robert C. Rolnik
Reg. No. 37,995
Yee & Associates, P.C.
P.O. Box 802333
Dallas, TX 75380
(972) 385-8777
Attorney for Applicants